



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2015-0174; FRL-10008-24-OW]

RIN 2040-AF94

Withdrawal of Certain Federal Water Quality Criteria Applicable to Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is taking final action to amend the federal regulations to withdraw certain human health water quality criteria applicable to waters in the State of Washington. The EPA is taking this action because the State adopted, and the EPA approved, human health criteria that the Agency determined are protective of Washington's designated uses for its waters. In this action, the EPA is amending the federal regulations to withdraw those certain human health criteria applicable to Washington but promulgated by the Agency, as described in the August 6, 2019 proposed rule. The withdrawal will enable Washington to implement its EPA-approved human health criteria, submitted on August 1, 2016, and approved on May 10, 2019, as applicable criteria for Clean Water Act (CWA or the Act) purposes.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action identified by Docket ID No.

EPA-HQ-OW-2015-0174, at <https://www.regulations.gov>. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Erica Fleisig, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number: (202) 566-1057; email address: fleisig.eric@epa.gov.

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I. General Information

Does this action apply to me?

This final action withdraws certain federal human health criteria (HHC) in the State of Washington that are no longer needed due to the EPA's approval of the corresponding State HHC on May 10, 2019. Entities discharging pollutants in Washington waters, citizens, as well as the State of Washington may be interested in this rulemaking, because after the effective date of this rulemaking Washington's EPA-approved HHC, rather than the federal HHC, will be the applicable water quality standards in Washington waters for CWA purposes. This action applies only to waterbodies in the State of Washington and does not apply to waters that are within Indian Country as defined in 18 U.S.C. 1151. If you have questions regarding the applicability of

this action to a particular entity, consult the person identified in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Background

What are the applicable federal statutory and regulatory requirements?

Consistent with the CWA, the EPA's water quality standards (WQS) program assigns to states and authorized tribes the primary authority for adopting WQS.¹ After a state adopts WQS, the state must submit them to the EPA for review and action in accordance with the CWA. If the EPA finds the state WQS are based on sound science and protect the state's designated uses, the CWA requires the EPA to approve those state WQS. The Act authorizes the EPA to promulgate federal WQS following the EPA's disapproval of state WQS or following an Administrator's determination that new or revised WQS are "necessary to meet the requirements of the Act."²

On September 14, 2015, the EPA proposed a federal rule to establish updated HHC in Washington based on an Administrator's determination that new or revised WQS were necessary to meet the requirements of the Act. Specifically, in its 2015 proposed rule, the EPA considered data representing regional and local fish consumption that reflected consumption levels much higher than the National Toxics Rule (NTR) fish consumption rate of 6.5 grams/day, and accordingly "determined that the federal human health criteria in the NTR as applied to Washington no longer protect the relevant designated uses of Washington's waters."³ To address the Administrator's determination pursuant to its CWA Section 303(c) authority, the EPA's

¹ 33 U.S.C. 1313(a), (c).

² 33 U.S.C. 1313(c)(4).

³ *Revision of Certain Water Quality Standards Applicable to Washington*, 80 FR 55063, 55066 (September 14, 2015).

proposed rulemaking established HHC using a fish consumption rate of 175 grams/day.⁴ The EPA also used all of the inputs from the EPA’s recently updated 2015 CWA Section 304(a) national recommended water quality criteria for the protection of human health to calculate the proposed federal criteria.⁵

Following the EPA’s 2015 proposed rulemaking, on August 1, 2016, Washington submitted HHC for the EPA’s review.⁶ Washington’s criteria were based on a fish consumption rate of 175 grams/day and incorporated most of the components of the EPA’s updated 2015 CWA Section 304(a) HHC recommendations.⁷ By using a fish consumption rate of 175 grams/day, which is consistent with the EPA’s proposed rulemaking, Washington’s HHC addressed the basis for the EPA’s 2015 Administrator’s determination – that it is necessary to adopt new or revised HHC based on a higher fish consumption rate.

For the reasons explained in the EPA’s 2016 disapproval letter and final federal rule, the EPA disapproved a subset of the HHC that Washington submitted to the EPA.⁸ The EPA’s final federal rule was issued concurrent with its partial disapproval letter.⁹ In explaining the rationale

⁴ *Id.* at 55066-55067.

⁵ *Id.* at 55063, 55066.

⁶ Department of Ecology. *Washington State Water Quality Standards: Human health criteria and implementation tools, Overview of key decisions in rule amendment*. August 2016. Ecology Publication no. 16-10-025.

⁷ *Id.*

⁸ November 15, 2016. Letter (EPA Partial Disapproval Letter) and enclosed Technical Support Document (Partial Disapproval TSD) from Daniel D. Opalski, Director, Office of Water and Watersheds, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: EPA’s Partial Approval/Disapproval of Washington’s Human Health Water Quality Criteria and Implementation Tools; 81 FR 85417 (“Concurrent with this final rule, EPA is taking action under CWA 303(c) to approve in part, and disapprove in part, the human health criteria submitted by Washington”).

⁹ *Revision of Certain Water Quality Standards Applicable to Washington*, 81 FR 85417 (November 28, 2016). Contrary to at least one comment letter EPA received prior to its May 10, 2019 Decision to Approve Washington’s criteria, the EPA did not provide the State with 90 days to remedy the partial disapproval, as envisioned in Section

underlying the partial disapproval of Washington’s August 1, 2016, submittal, the EPA “agree[d] with Washington’s decision to derive the HHC using a FCR of 175 g/day,” noting that the value was consistent with the EPA’s final federal rule.¹⁰ However, the EPA disagreed with some of the risk management decisions the State made during the development of its HHC and its decision not to incorporate all components of the updated 2015 CWA Section 304(a) HHC recommendations.¹¹

Although the EPA promulgated HHC for Washington in the NTR, and subsequently in November 2016, the EPA prefers that states maintain primary responsibility and establish their own WQS in keeping with the text and structure of the CWA. In response to a February 21, 2017, petition from several entities asking the EPA to reconsider the partial disapproval of Washington’s August 2016 HHC,¹² the EPA issued a letter on August 3, 2018, stating its intent to reconsider the partial disapproval of Washington’s HHC and the subsequent promulgation of federal criteria.¹³ After a thorough review of the State’s 2016 submittal and applicable provisions

303(c)(3) of the Act. *See* May 7, 2019 Letter from the Lower Elwha Klallam Tribe to Administrator Andrew Wheeler, EPA, Re: Washington State Water Quality Standards at 4.

¹⁰ Partial Disapproval TSD at 16.

¹¹ November 15, 2016. Letter (EPA Partial Disapproval Letter) and enclosed Technical Support Document (Partial Disapproval TSD) from Daniel D. Opalski, Director, Office of Water and Watersheds, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: EPA’s Partial Approval/Disapproval of Washington’s Human Health Water Quality Criteria and Implementation Tools.

¹² February 21, 2017. *Petition for Reconsideration of EPA’s Partial Disapproval of Washington’s August 1, 2016 submission on Human Health Water Quality Criteria and Implementation Tools, and Repeal of the Final Rule Revision of Certain Federal Water Quality Standards Applicable to Washington*, 81 FR 85417 (November 28, 2016) submitted by Northwest Pulp & Paper Association, American Forest and Paper Association, Association of Washington Business, Greater Spokane Incorporated, Treated Wood Council, Western Wood Preservers Institute, Utility Water Act Group and Washington Farm Bureau.

¹³ August 3, 2018. Letter from David P. Ross, Assistant Administrator, Office of Water, EPA to Penny Shamblin, Counsel for Utility Water Act Group, Re: Petition for Reconsideration of the Environmental Protection Agency’s (EPA) Partial Disapproval of Washington’s Human Health Water Quality Criteria and Implementation Tools submitted by the State of Washington on August 1, 2016, and Repeal of the Final Rule Revision of Certain Federal Water Quality Standards Applicable to Washington.

of the CWA, its implementing regulations, and longstanding EPA guidance, on May 10, 2019, the EPA reconsidered its partial disapproval of Washington's HHC and approved all but two of the criteria that the EPA previously disapproved.¹⁴ In addition, the EPA approved four criteria for two pollutants (thallium and 2,3,7,8-TCDD [dioxin]) that the EPA previously deferred action on in November 2016. The EPA reaffirmed its November 2016 disapproval of the two criteria that Washington submitted for arsenic (water + organism and organism only).

As provided in 40 CFR 131.21(c), federally promulgated WQS that are more stringent than EPA-approved state WQS remain applicable for purposes of the CWA until the EPA withdraws the federal standards. Accordingly, on August 6, 2019 (84 FR 38150) the EPA proposed to amend the federal regulations to withdraw those federally promulgated HHC for which the EPA has approved Washington's HHC and provided an opportunity for public comment on this proposed action. The EPA received comments on the proposed rulemaking and a listing of the comments and the Agency's responses are contained in the document "Response to Comments, Revision of Certain Federal Water Quality Criteria Applicable to Washington," which can be accessed at OW docket number EPA-HQ-OW-2015-0174. The EPA is now taking action to finalize the withdrawal of the federal rule as proposed.

The withdrawal of the federally promulgated criteria will enable Washington to implement its EPA-approved HHC, consistent with the federal and state roles contemplated by the CWA. Consistent with the cooperative federalism structure of the CWA, once the EPA

¹⁴ May 10, 2019. Letter and enclosed Technical Support Document from Chris Hladick, Regional Administrator, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: The EPA's Reversal of the November 15, 2016 Clean Water Act Section 303(c) Partial Disapproval of Washington's Human Health Water Quality Criteria and Decision to Approve Washington's Criteria.

approves state WQS addressing the same pollutants for which the EPA has promulgated federal WQS, it is incumbent on the EPA to withdraw the federal WQS to enable the EPA-approved state WQS to become the applicable WQS for CWA purposes.

III. What are the Federal Water Quality Criteria that the EPA is Withdrawing?

As discussed in the proposed rulemaking (see 84 FR 38150, August 6, 2019), this final rule amends the federal regulations to withdraw all federal HHC promulgated for Washington in November 2016 at 40 CFR 131.45,¹⁵ with the exception of criteria for arsenic, methylmercury, and bis (2-chloro-1-methylethyl) ether. For arsenic, on May 10, 2019, the EPA reaffirmed its November 2016 disapproval of the two criteria Washington submitted for arsenic (water + organism and organism only), and therefore the federal arsenic criteria, originally promulgated under the NTR and now at 40 CFR 131.45 for Washington remain in place.¹⁶ For priority pollutants methylmercury and bis (2-chloro-1-methylethyl) ether, Washington did not submit criteria for those pollutants in its 2016 WQS submittal. Therefore, the federal methylmercury and bis (2-chloro-1-methylethyl) ether criteria that the EPA promulgated on November 28, 2016 (and that became effective on December 28, 2016) remain in effect in the State.

The EPA did not make any changes in response to the comments received on the proposed rulemaking. The EPA received 333 unique comments on the proposed rulemaking and approximately 5,000 comments as part of mass mailing campaigns. The EPA also held two

¹⁵*Revision of Certain Water Quality Standards Applicable to Washington*, 81 FR 85417 (November 28, 2016).

¹⁶ May 10, 2019. Letter and enclosed Technical Support Document from Chris Hladick, Regional Administrator, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: The EPA's Reversal of the November 15, 2016 Clean Water Act Section 303(c) Partial Disapproval of Washington's Human Health Water Quality Criteria and Decision to Approve Washington's Criteria.

public hearings on the proposed rulemaking (an online hearing on August 28, 2019 and an in-person hearing in Seattle, Washington on September 25, 2019) and received public comments during those hearings. Brief summaries of the comments and the EPA's responses are provided in this section. As noted previously, a full accounting of the comments and the Agency's responses can be found in the docket for this rulemaking.

A. Comments in Support of the EPA's Proposal to Withdraw the Federal HHC

Some commenters supported the EPA's May 10, 2019 decision to approve Washington's HHC upon reconsideration and the EPA's proposal to withdraw the federal HHC. These commenters asserted that Washington's HHC were sufficiently protective of the applicable designated uses in the State and that the federal HHC were unattainable and costly. These commenters stated that implementation of Washington's HHC will result in meaningful improvements to water quality, rather than regulatory uncertainty. Some commenters also noted that withdrawing the federal HHC could result in significant cost savings.

The EPA appreciates the comments in support of its May 10, 2019 action and proposal to withdraw the federal HHC. More information on the EPA's action to approve Washington's HHC upon reconsideration, including the EPA's approval letter and associated Technical Support Document, can be accessed at <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-washington> and in the docket for this proposed rule.

Some of these commenters also asked the EPA to approve, upon reconsideration, Washington's HHC for arsenic. Comments concerning the EPA's disapproval of Washington's

2016 arsenic criteria are beyond the scope of this rulemaking. The EPA's May 10, 2019 decision document sets forth the EPA's rationale for the disapproval.¹⁷

B. Comments in Opposition to the EPA's Proposal to Withdraw the Federal HHC

Other commenters opposed the EPA's proposal to withdraw the federal HHC and requested that the EPA retain the federal criteria. Many of these commenters focused on and described their opposition to the EPA's May 10, 2019 decision to approve Washington's HHC upon reconsideration. These commenters asserted that Washington's HHC are less stringent than the federal HHC and therefore expressed concern that implementation of Washington's HHC would reduce protections for human health, especially among consumers of large quantities of fish sourced from the waters subject to the HHC. Several commenters asserted that the EPA's approval of Washington's HHC was arbitrary and capricious because they alleged that Washington's HHC are not based on sound scientific rationale, and accordingly urged the EPA to retain the federal criteria which they asserted are based on sound scientific rationale. The EPA disagrees with commenters who asserted or implied that *all* of Washington's HHC are less stringent than the federal HHC. As described in the EPA's May 10, 2019 decision document, some of Washington's HHC are less stringent than the federal HHC, and some are more stringent. Indeed, in 2016 the EPA approved 45 of Washington's HHC that were as stringent or more stringent than the EPA's calculated HHC. The EPA also disagrees with commenters who asserted that the EPA's approval was arbitrary and capricious and that Washington's HHC are

¹⁷ May 10, 2019. Letter and enclosed Technical Support Document from Chris Hladick, Regional Administrator, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: The EPA's Reversal of the November 15, 2016 Clean Water Act Section 303(c) Partial Disapproval of Washington's Human Health Water Quality Criteria and Decision to Approve Washington's Criteria.

not based on sound science. The EPA's rationale is thoroughly described in the EPA's May 10, 2019 decision document, including the EPA's conclusion that Washington's HHC are based on sound science and are protective of Washington's designated uses.

Commenters also raised concerns about the EPA's approval of Washington's HHC for Polychlorinated Biphenyls (PCBs) and requested that EPA retain the federal PCB criteria. Some of these commenters asserted that the EPA lacks authority to reverse its prior disapproval of Washington's HHC and that the reversal and withdrawal of the federal rule would lead to litigation and regulatory uncertainty.

The EPA's authority to promulgate new or revised federal criteria is not at issue in this action to withdraw the federal criteria. Because the EPA has approved certain HHC developed and submitted by the State, the federal HHC that the Agency promulgated after its initial disapproval of the State's 2016 submittal are no longer needed. This action is consistent with the federal and state roles contemplated by the CWA (see 40 CFR 131.21(c)). For the EPA's rationale for approving Washington's HHC, see the May 10, 2019 decision document.¹⁸

C. Comments Concerning Methylmercury and Bis (2-Chloro-1-Methylethyl) Ether

Several commenters stated that the EPA should leave the federal HHC in place for methylmercury and bis (2-chloro-1-methylethyl) ether and that the EPA cannot legally withdraw these HHC and leave nothing in place. Other commenters stated that the federal methylmercury HHC are unattainable and will result in widespread impairments across the State. Some of these

¹⁸ May 10, 2019. Letter and enclosed Technical Support Document from Chris Hladick, Regional Administrator, EPA Region 10 to Maia Bellon, Director, Department of Ecology, Re: The EPA's Reversal of the November 15, 2016 Clean Water Act Section 303(c) Partial Disapproval of Washington's Human Health Water Quality Criteria and Decision to Approve Washington's Criteria.

commenters questioned the scientific underpinnings of the methylmercury HHC. Some commenters recommended that the EPA promulgate a revised methylmercury HHC for Washington of 0.3 mg/kg in fish tissue, which is the EPA's CWA Section 304(a) national recommended criterion for methylmercury. All commenters who addressed this issue noted that mercury is a ubiquitous pollutant in Washington's waters. No commenters provided information on the presence or absence of bis (2-chloro-1-methylethyl) ether in Washington's waters.

CWA Section 303(c)(2)(B) requires that states "shall adopt criteria for all toxic pollutants listed pursuant to Section 1317(a)(1) of this title for which criteria have been published under Section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses." The EPA is retaining the federal HHC for methylmercury and bis (2-chloro-1-methylethyl) ether, consistent with CWA Section 303(c)(2)(B) for the following reasons: 1) methylmercury and bis (2-chloro-1-methylethyl) ether are both priority pollutants, 2) commenters and the EPA agree that methylmercury is ubiquitous in Washington's waters, and 3) no commenters provided information that counters the prior conclusion that these priority pollutants could be expected to interfere with Washington's uses. The EPA is not promulgating a revised HHC value for methylmercury. The 0.3 mg/kg CWA Section 304(a) recommended HHC is based on a fish consumption rate of 17.5 g/day rather than the 175 g/day rate adopted by the State of Washington and used by the EPA in deriving the federal HHC for methylmercury. There is nothing in the EPA's rulemaking record that indicates a different fish consumption rate should be used for a methylmercury HHC. However, nothing in this action or in any federal regulation

would preclude a future rulemaking for HHC using a different fish consumption rate that is supported by a rulemaking record.

The EPA acknowledges the concerns that some commenters raised about attainability of the existing federal methylmercury HHC. In 2010, the EPA published the comprehensive *Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion* (EPA 823-R-10-001) (“2010 Guidance”), to aid states and authorized tribes in implementing the EPA’s national CWA Section 304(a) recommended fish tissue-based methylmercury water quality criterion. The EPA recommends that Washington, like certain other states that have adopted a fish tissue-based methylmercury criterion, implement the fish tissue criterion using a combination of pollutant minimization plans, monitoring, and effluent limits or trigger values as appropriate as explained in the EPA’s 2010 Guidance.

In circumstances where attaining the methylmercury HHC may not be feasible, the State could undertake a new rulemaking and exercise its discretion in risk management to make adjustments to the HHC factors in the EPA’s 2015 304(a) HHC recommendations, including adopting a different fish consumption rate that is supported by a rulemaking record. Additionally, changes to the applicable designated use or adoption of a WQS variance may be an option. The federal regulation at 40 CFR 131.10(g) provides requirements for establishing, modifying, and removing designated uses when attaining the use is not feasible for one of the six factors in the regulation. The federal regulation at 40 CFR 131.3(o) defines a WQS variance as a time-limited designated use and criterion, for a specific pollutant or water quality parameter, that reflects the highest attainable condition during the term of the WQS variance. A WQS variance may be appropriate if attaining the use and criterion would not be feasible during the term of the

WQS variance because of one of the seven factors specified in 40 CFR 131.14(b)(2)(i)(A), including if NPDES permit limits more stringent than technology-based controls would result in substantial and widespread economic and social impact. WQS variances adopted in accordance with 40 CFR 131.14 (including a public hearing consistent with 40 CFR 25.5) provide a flexible but defined pathway for states and authorized tribes to issue NPDES permits with limits that are based on the highest attainable condition during the term of the WQS variance thereby allowing dischargers to make water quality improvements when the WQS is not immediately attainable but may be in the future.

It may be possible for the EPA to identify widely applicable reduction targets for mercury and other hard to treat pollutants by partnering with interested states and authorized tribes to compile literature and share data on available treatment technologies and source reduction measures. The EPA has included in the docket for this rulemaking a brief presentation that the Agency gave to Washington and a handful of other states at a WQS program meeting in September 2019 to begin a dialogue on these technical questions for select pollutants. The EPA anticipates engaging further with Washington and other interested states and authorized tribes on how to best address the challenges associated with implementing the methylmercury HHC. The EPA has established the email address wqs-implementation@epa.gov for states and authorized tribes to express interest in and/or provide ideas for future discussion.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is a deregulatory action under Executive Order 13771.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information-collection burden under the PRA because it is administratively withdrawing federal requirements that are no longer needed in Washington. It does not include any information collection, reporting, or recordkeeping requirements. The OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR part 131 and has assigned OMB control number 2040– 0049.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Small entities, such as small businesses or small governmental jurisdictions, are not directly regulated by this rule.

E. Unfunded Mandates Reform Act (UMRA)

This action contains no unfunded federal mandates under the provisions of Title II of the UMRA of 1995, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. As this action withdraws certain federally promulgated criteria, the action imposes no enforceable duty on any state, local, or tribal governments, or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule imposes no regulatory requirements or costs on any state or local governments. Thus, Executive Order 13132 does not apply to this action.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. In the State of Washington, there are 29 federally recognized Indian tribes. As part of today's action, the EPA has met its responsibilities under Executive Order 13175 and its Tribal Consultation Policy.

The EPA initiated consultation with federally recognized tribal officials under the EPA's Policy on Consultation and Coordination with Indian tribes early in the process of developing this rule to allow meaningful and timely input into its development. The EPA initially offered tribal consultation on this rule making on May 21, 2019. EPA staff then offered two informational calls for tribal staff on June 4 and 5, 2019, to assist tribes with the consultation process, including the tribes' decisions on whether to accept the offer to consult. Many tribes expressed dissatisfaction that EPA did not offer consultation prior to its May 10, 2019, decision and questioned how meaningful the EPA's offer for consultation was on this rule making as a result. Between June and November 2019, the EPA's representatives traveled and met in person with 16 tribes. One tribe considered the meeting to be a formal government-to-government

consultation. Additionally, members of the Makah Tribe met with Headquarters and Region 10 representatives on October 23, 2019 in Washington, D.C., which the tribe considered to be consultation.

The tribes expressed opposition to the EPA's May 10, 2019 decision and the withdrawal of the federal HHC. A central concern voiced by tribes is that they believe the EPA did not engage in meaningful consultation with tribal governments prior to its May 10, 2019 decision. Tribes expressed concern that treaty rights and the federal government's trust responsibility were not considered adequately by the EPA in the May 10, 2019 decision. Some of the tribes questioned the EPA's authority to make such a decision. Tribes described the cultural importance of fish and water to their livelihood and the local economy. Although Washington's HHC do not apply in Indian Country, tribes nonetheless were concerned about the health impacts of Washington's HHC on their off-reservation treaty-reserved fishing rights and expressed a desire for "pristine" waters for future generations. Tribes noted that they believe implementation tools exist for the regulated community to adapt and meet the federal criteria. Many of the tribes indicated that they believe environmental protection can be balanced with economic progress, especially through technology improvements.

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA is taking final action to amend the federal regulations to withdraw certain HHC applicable to waters in the State of Washington. The withdrawal will enable Washington to implement its EPA-approved HHC. The EPA has previously determined that Washington’s adopted and EPA-approved criteria are protective of human health.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 17, 2020.

Andrew Wheeler,
Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—Federally Promulgated Water Quality Standards

2. Amend § 131.45 by revising paragraph (b) to read as follows:

§ 131.45 Revision of certain Federal water quality criteria applicable to Washington.

* * * * *

(b) *Criteria for priority toxic pollutants in Washington.* The applicable human health criteria are shown in Table 1 to paragraph (b).

TABLE 1 TO PARAGRAPH (b)—HUMAN HEALTH CRITERIA FOR WASHINGTON

A		B					C	
Chemical	CAS No.	Cancer Slope factor, CSF (per mg/kg·d)	Relative source contribution, RSC (-)	Reference dose, RfD (mg/kg·d)	Bio-accumulation factor (L/kg tissue)	Bio-concentration factor (L/kg tissue)	Water & organisms (µg/L)	Organisms only (µg/L)
		(B1)	(B2)	(B3)	(B4)	(B5)	(C1)	(C2)
1. Arsenic*	7440382	1.75	-	-	-	44	^a 0.018	^a 0.14
2. Bis (2-Chloro-1-Methylethyl) Ether**	108601	-	0.50	0.04	10	-	400	900
3. Methylmercury	22967926	-	2.7E-05	0.0001	-	-	-	^b 0.03 (mg/kg)

^a This criterion refers to the inorganic form of arsenic only.

^b This criterion is expressed as the fish tissue concentration of methylmercury (mg methylmercury/kg fish). See *Water Quality Criterion for the Protection of Human Health: Methylmercury* (EPA-823-R-01-001, January 3, 2001) for how this value is calculated using the criterion equation in the EPA's 2000 Human Health Methodology rearranged to solve for a protective concentration in fish tissue rather than in water.

* These criteria were promulgated for Washington in the National Toxics Rule at 40 CFR 131.36, and are moved into 40 CFR 131.45 to have one comprehensive human health criteria rule for Washington.

** Bis (2-Chloro-1-Methylethyl) Ether was previously listed as Bis (2-Chloroisopropyl) Ether.

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[FR Doc. 2020-08497 Filed: 5/12/2020 8:45 am; Publication Date: 5/13/2020]